IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PHILLIP AUGUSTINE, SR.,	:	CIVIL ACTION
PAMELA AUGUSTINE,	:	No. 05-CV-2073
PHILLIP AUGUSTINE, JR.,	:	
DARNELL COLEMAN,	:	
JAMAL COLEMAN,	:	
THEAGNES AUGUSTINE,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CHUBB GROUP OF INSURANCE COMPANIES,	:	
Defendant.	:	

MEMORANDUM AND ORDER

NEWCOMER, S.J. July 27, 2005

Presently before the court is Plaintiffs' Motion to Remand. For the reasons stated below, Plaintiffs' Motion is GRANTED. The Court's reasoning follows.

I. BACKGROUND

On February 24, 2004, Plaintiffs Pamela Augustine, Phillip Augustine, Jr., Darnell Coleman, Jamal Coleman, and Theagnes Augustine were traveling together in a 2003 Dodge Caravan, which was owned and operated by Plaintiff Phillip Augustine, Sr. The Dodge Caravan was allegedly struck by an unknown vehicle from the rear while it was stopped at the intersection of Presidential Boulevard and City Line Avenue in Philadelphia, Pennsylvania. Each Plaintiff suffered individual injuries resulting from the collision, for which they sought medical treatment.

The 2003 Dodge Caravan was insured by Defendant Great

Northern Insurance Company[1] ("Great Northern"), an insurance company affiliated with Chubb Group of Insurance Companies. The policy at issue provides first party benefits for the insured driver and all passengers. Each Plaintiff submitted claim forms to Great Northern for the medical expenses incurred as a result of the collision; Phillip Augustine, Sr., filed an additional claim for property damage to the insured automobile. Great Northern has denied all of these claims.

On March 18, 2005, Plaintiffs filed suit in the Court of Common Pleas of Philadelphia County against Chubb Group of Insurance Companies, demanding payment of each Plaintiff's medical claim, payment of Phillip Augustine, Sr.'s property damage claim, payment of attorney fees pursuant to sections 1716 and 1798 of the Pennsylvania Motor Vehicle Financial Responsibility Law ("MVRL"), 75 PA. CONS. STAT. §§ 1701-1799.7 (2004), payment of treble damages pursuant to section 1797 of the MVRL, and payment of bad faith damages pursuant to 42 PA. CONS. STAT. § 8371 (2004). Importantly, the Civil Cover Sheet under which Plaintiffs filed their complaint stated that the amount in controversy was less than $50,000.

On May 2, 2005, Great Northern removed this action on the basis of diversity jurisdiction. Plaintiffs thereafter moved for

[1]It is undisputed that Great Northern is the intended defendant of the lawsuit.

remand.

II. LEGAL STANDARD

Under 28 U.S.C. § 1441(a), "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant . . . to the district court of the United States." 28 U.S.C. § 1441(a). An action shall be remanded pursuant to 28 U.S.C. § 1447(c) (2005), at any time the district court appears to lack jurisdiction. The removing party bears the burden of showing that jurisdiction is proper. Samuel-Bassett v. Kia Motors Am., Inc., 357 F.3d 392, 395 (3d Cir. 2004). The removal statutes "are to be strictly construed *against removal* and all doubts should be resolved in favor of remand." Boyer v. Snap-On Tools, 913 F.2d 108, 111 (3d Cir. 1990)(internal citations omitted)(emphasis added).

The district court may exercise subject matter jurisdiction over civil actions between citizens of different states where the amount-in-controversy exceeds $75,000 pursuant to 28 U.S.C. § 1332(a). A corporation is deemed to be a citizen of the state by which it is incorporated and of the state where it has its primary place of business. 28 U.S.C. § 1332(c). The Third Circuit has adopted a legal-certainty standard regarding a defendant's burden of proof when asserting jurisdiction over an action. See Samuel-Bassett, 357 F.3d at 398.

III. DISCUSSION

A. Complete Diversity of Parties

28 U.S.C. § 1332 requires that parties be citizens of different states. The Parties here are completely diverse because Plaintiffs are all citizens of Pennsylvania, and Defendant is a citizen of both Minnesota and New Jersey. Courts have consistently interpreted the requirements of 28 U.S.C. § 1332(c) to mean that a party must allege both a corporation's state of incorporation and principal place of business. See Moore v. Sylvania Elec. Prods., Inc., 454 F.2d 81, 84 n.1 (3d Cir. 1972). An allegation that a party has a "registered office" in a state is not analogous to an allegation that their principal place of business is there. See Randazzo v. Eagle-Picher Industries, Inc., No. 87-5932, 1987 U.S. Dist. LEXIS 9849, at *3-4 (E.D. Pa. Oct. 28, 1987).

Plaintiffs, all citizens of Pennsylvania, deny that the Parties are completely diverse. They argue that Defendant is a citizen of Pennsylvania because it conducts business and maintains a "secure" place of business in Pennsylvania, and because it sold insurance products to Pennsylvania residents and businesses. (Mot. to Remand ¶¶ 3, 7). Nowhere in their Motion do Plaintiffs set forth either Defendant's state of incorporation or principal place of business. Defendant, however, has persuasively demonstrated to the Court that Great Northern is

incorporated in Minnesota and has its principal place of business in New Jersey. The Pennsylvania Insurance Department website identifies Minnesota as Great Northern's state of incorporation, as does the policy at issue. See Ex. B (Doc. 4). The website further identifies Great Northern's mailing address as New Jersey, which Natice Thompson, an employee of Chubb & Son, confirmed in her deposition to be the location of Great Northern's main office. See Ex. C (Doc. 4). Therefore, the Parties to this action are completely diverse.

B. Amount in Controversy

The amounts in controversy for each individual Plaintiff's claim fail to exceed the $75,000 jurisdictional amount required by 28 U.S.C. § 1332. The amount in controversy is to be determined from the complaint itself. See Horton v. Liberty Mut. Ins. Co., 367 U.S. 348, 353 (1961). Where it appears to a legal certainty that the amount in controversy will not exceed the jurisdictional amount required by statute, the action must be remanded to state court. See Samuel-Bassett, 357 F.3d at 398. The amount in controversy will frequently be determined by state law. Id. at 397. For example, where state law denies recovery of certain damages, such as punitive damages, the federal courts cannot consider the value of those damages when evaluating the amount in controversy. See id. at 397-98.

1. *$50,000* Ad Damnum *Clause*

The *ad damnum* clause on Plaintiffs' Civil Cover Sheet limits Plaintiffs' recovery to $50,000 despite Defendant's contentions that the clause is "open-ended," and that each Plaintiff's claim independently satisfies the jurisdictional amount. Defendant argues that the *ad damnum* clause is *not* limiting, and relies on Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214 (3d Cir. 1999). Meritcare is distinguishable from the instant case because the *ad damnum* clause stated that the damages sought *exceeded* $25,000. Here, the *ad damnum* clause *limits* damages to $50,000. Defendant's contention is therefore without merit.

It appears to a legal certainty that the amount in controversy in this case will not exceed the jurisdictional amount because, pursuant to 42 PA. CONS. STAT. § 7361 (2004), the total amount of damages recoverable at arbitration is capped at $50,000. 42 PA. CONS. STAT. § 7361 mandates arbitration in the Court of Common Pleas for cases where the amount in controversy is stated to be $50,000 or less. My colleagues have repeatedly held that such an *ad damnum* clause limits a plaintiff's right of recovery to $50,000 and thus prevents removal.[2] See O'Toole v.

[2]The Court notes that there are many on-point decisions within the controlling jurisdiction which clearly support Plaintiffs' argument and contradict Defendant's argument, that were not cited in either Plaintiffs' or Defendant's briefs. The Court further notes that Rule 3.3(a)(3) of the Pennsylvania Rules of Professional Conduct forbids a lawyer from knowingly failing "to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel." PA. RULES OF PROF'L CONDUCT R.

State Farm Fire & Cas. Co., No. 03-5442, 2004 U.S. Dist. LEXIS 9426 (E.D. Pa. May 20, 2004) (finding that, pursuant to 42 PA. CONS. STAT. § 7361, total damages were capped at $50,000 where plaintiff sought damages "not in excess of $50,000"); Connelly v. Schleef, No. 01-5559, 2002 U.S. Dist. LEXIS 1831 (E.D. Pa. Jan. 30, 2002) (finding that possibility of recovering more than $50,000 on appeal from arbitration did not sufficiently demonstrate amount in controversy exceeded $50,000 or $75,000); Gottehrer v. State Farm Ins. Cos., No. 96-1663, 1996 U.S. Dist. LEXIS 5687 (E.D. Pa. Apr. 30, 1996) (finding that plaintiff limited his initial right of recovery to $50,000 because complaint was filed as an arbitration case in the Court of Common Pleas). Plaintiffs' case was designated for compulsory arbitration, pursuant to 42 PA. CONS. STAT. § 7361, in the Court of Common Pleas in Philadelphia because Plaintiffs sought damages of "$50,000 or less." Plaintiffs are therefore, as a matter of law, unable to recover damages in excess of $50,000.

2. *Aggregation of Plaintiffs' Claims*

Plaintiffs' claims cannot be aggregated to meet the jurisdictional amount. It is well-established that the separate and distinct claims of several plaintiffs cannot be aggregated to determine the amount in controversy. See Meritcare, 166 F.3d at 218. Where, however, several plaintiffs are collectively

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3.3(a)(3)(2004).

enforcing "a single title or right in which they have a common and undivided interest, it is enough if their interests collectively equal the jurisdictional amount." Pinel v. Pinel, 240 U.S. 594, 596 (1916). Nonetheless, "[a]ggregation of plaintiff's claim cannot be made merely because claims are derived from a single instrument, or because plaintiffs have a community of interest." Thomson v. Gaskill, 315 U.S. 442 (1942); see Pohl v. NGK Metals Corp., 117 F.Supp.2d 474, 477 (E.D. Pa. 2000) (finding that claims were separate and distinct, despite the fact harms emanated from a common source, because individual plaintiffs suffered distinct harms and an individual duty was owed to each plaintiff).

Here, Plaintiffs' claims are separate and distinct. The Great Northern Policy at issue unambiguously provides first party benefits, including uninsured motorist coverage, to the insured driver, the insured driver's family members, and the insured driver's passengers. See Bowersox v. Progressive Cas. Ins. Co., 781 A.2d 1236, 1239 (Pa. Super. Ct. 2001) ("When policy language is clear and unambiguous, [the court] will give effect to language of the contract."). Because Plaintiffs, individually, were covered by the Great Northern Policy, Great Northern owes a duty to each Plaintiff, and consequently, each Plaintiff suffered a distinct harm when Great Northern refused to pay their claims. Additionally, each Plaintiff has an individual right to

adjudication against Great Northern for non-payment of their claims, and Plaintiffs do not share a common or undivided interest in any property. See Sprately v. Aetna Casualty & Surety Co., 704 F.Supp. 595, 598 (E.D. Pa. 1989) (holding that insurer owed an individual duty to passenger in an insured vehicle where passengers were covered by the policy). Therefore, Plaintiffs' claims cannot be aggregated to meet the jurisdictional amount.

3. *Consideration of Compulsory Counterclaim*

Great Northern's compulsory counterclaim cannot be used by the Court to determine whether the amount in controversy exceeds the jurisdictional amount. The majority view, as noted by the Third Circuit, is that inclusion of counterclaims for purposes of determining the amount in controversy should *not* be permitted *in the removal context*. See Spectacor Mgmt. Group v. Brown, 131 F.3d 120, 125-26 (3d Cir. 1997)("if compulsory counterclaims were considered for purposes of jurisdiction, federal subject matter jurisdiction would be reliant on state law distinctions between compulsory and permissive counterclaims.")(citations omitted); Michael F. Ronca & Sons, Inc. v. Monarch Water Systems, Inc., No. 90-502, 1990 U.S. Dist. LEXIS 12660, at *6 (E.D. Pa. Sept. 24, 1990)("other courts faced with [cases in a removal context] have, almost without exception, chosen to decline the defendant's invitation to consider the counterclaim."). Defendant asserts

that its compulsory counterclaim should be considered by the court because "the substance of the controversy extends to any compulsory counterclaim brought under Rule 13(a)." Id. at 122. Defendant's reliance on Spectacor is misguided, however, as Spectacor directly contradicts Defendant's argument. Because Spectacor plainly states that compulsory counterclaims cannot be considered as part of the amount in controversy in cases of removal, Defendant's compulsory counterclaim cannot be used to determine the amount in controversy. See id. at 125.

Therefore Plaintiffs' individual claims are for less than the jurisdictional amount; their case must be remanded.

IV. CONCLUSION

For the reasons stated above, Plaintiffs' Motion to Remand is granted. An appropriate order follows.

S/ Clarence C. Newcomer
United States District Judge

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Plaintiffs,	:	
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v.	:	
	:	
CHUBB GROUP OF INSURANCE COMPANIES,	:	
Defendant.	:	

O R D E R

AND NOW, this 27th day of July, 2005, upon consideration of Plaintiffs' Motion to Remand (Doc. 3), Defendant's Response, and the Parties' Supplemental Briefs, it is hereby ORDERED that said Motion is GRANTED. Accordingly, the above-captioned action is REMANDED to the Court of Common Pleas of Philadelphia County. The Clerk of the Court shall mark this case CLOSED for statistical purposes.

AND IT IS SO ORDERED.

S/ Clarence C. Newcomer
United States District Judge